

IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE  
WESTERN DIVISION

**FILED**

TERESA FIDDLER,

Claimant

OCT 08 2009

Tennessee Claims Commission  
CLERK'S OFFICE

v.

Claim Number T 20-070-248  
REGULAR DOCKET

STATE OF TENNESSEE,

Defendant

COMPUTER ☒  
DOCKETED ☒  
CYB-DOCK ☒  
DCA ☒  
AG ☒  
ALJ ☒  
FEE PAID ☒  
NOTICE SENT ☒  
FILED ☒  
Sca

**ORDER**

This cause came to be heard on Defendant's *Motion for Summary Judgment* and supporting documents, Claimant's response thereto, *Reply Brief in Support of Defendant's Motion for Summary Judgment* and, indeed, the record as a whole.

Claimant, Teresa Fiddler, brought this action on or about August 24, 2006 as next friend of her daughter, Tennille Willis. Although the case heading indicated that her daughter was a minor, the body of the Complaint filed stated that Willis was born on August 2, 1988, making her eighteen years old when this claim was filed in

late August, 2006. The State contends that Claimant cannot bring this action on behalf of her adult daughter, Tennille Willis.

Tenn. R. Civ. P. 17.03 provides:

Whenever an infant or incompetent person has a representative or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, or if justice requires, he or she may sue as next friend.

Under Tennessee law, an eighteen year old is not considered a minor or infant. See Tenn. Code Ann. § 1-3-105 (1). Thus, to proceed as “next friend” to Tennille Willis, Claimant must show that Willis is incompetent.

There are few cases which discuss what it takes to make a showing of incompetence for “next friend” purposes, and most of those were habeas corpus cases initiated on behalf of prisoners. However, even in those cases, where a person’s life or liberty interest is at stake, the courts require the petitioner to show that the prisoner lacks the “capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or . . . suffer[s] from a mental disease, disorder or defect which may substantially affect his capacity in this premises.” *Holton v. State*, 201 S.W.3d 626, 632, quoting *West v. Bell*, 242 F. 3d 338, 341 (6<sup>th</sup>

Cir. 2001). To prevail, the would-be next friend must present “specific factual allegations that demonstrate the petitioner’s inability to manage his personal affairs or understand his legal rights and liabilities.” *Holton*, 201 S.W. 3d at 633, quoting *State v. Nix*, 40 S.W.3d 459, 464 (Tenn.2001).

In the case at bar, Claimant proffers her own testimony, some of which, as Defendant notes, is hearsay and would not be admissible in this cause. Claimant states that Willis has difficulty with spelling, writing and math, has “no sense of direction” and says she “can’t take care of herself.” (October 8, 2008 Dep. of Teresa Fiddler, pp. 42-43) Claimant also testified that Willis “had ADHD, but as a— just a normal child, she’s a happy child.” (*Id.*, at 53)

Claimant testified that in 2005, Willis ran away and broke into her brother’s home for food and clothing. Her mother called the police. Claimant testified that after her daughter was released from a juvenile residential facility, Willis tried to kill herself. (*Id.*, p. 57-60)

Claimant stated her daughter had been diagnosed with depression and had taken medication for it. (*Id.*, pp. 63-64) Claimant described her daughter’s mental issues this way: “Anger, disrespect,

frustration, not being able to deal in school when she can't complete a task, you know, she gets upset." (*Id.*, p. 61)

Claimant also proffers educational records from when Claimant attended Arnold High School in Florida, including a 2003 "Confidential Psycho-Educational Report," hereinafter referred to as Report, with IQ testing showing her in the "low average range." (See Report, p. 2), and nonverbal reasoning/visualization in the "slow learner range." (*Id.*, p. 3) The Report itself states that it should be re-administered "at least triennially" because these evaluations become less reliable over time. (*Id.*)

Claimant concedes that Willis was not in special education classes during the time she was in DCS custody and that she was able to understand and sign the HIPPA complaint release form and Protective Order she signed in this case. (Fiddler Dep., p. 121, lines 5-6; *Claimant's Response to Statement of Undisputed Facts by the State of Tennessee*, para. 13)

Claimant has offered no medical or other proof that warrants a finding that Willis is incompetent. Claimant's own testimony establishes that her daughter is a troubled, immature young adult with anger issues who sometimes behaves irresponsibly, but comes no

where close to establishing that she is mentally incompetent. Claimant's own relevant testimony consists mostly of conclusory statements like her assertion that Willis "can't take care of herself." (*Id.*, p. 43)

Because Claimant has not shown that Willis is incompetent, Claimant cannot proceed as "next friend" under Tenn. R. Civ. P. 17.03.

Accordingly, Defendant's motion for summary judgment must be granted and this claim is hereby **DISMISSED**.

The remaining issues raised in Defendant's motion are pretermitted.

**IT IS SO ORDERED.**

  

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NANCY C. MILLER-HERRON,  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Order was forwarded via first-class mail, postage prepaid, this 8 day of October 2009, to the following:

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**MARSHA RICHESON, CLERK**  
Tennessee Claims Commission